

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	
	)	CG Docket No. 05-231
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	

**THE FLORIDA ASSOCIATION OF BROADCASTER'S  
COMMENTS TO NOTICE OF PROPOSED RULEMAKING**

\_\_\_\_\_The Florida Association of Broadcasters ("FAB"), by its counsel, submits the following comments with respect to the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking, CG Docket No. 05-231, released July 21, 2005, in the matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc. Petition for Rulemaking.

The FAB wholly concurs with the FCC and Congress that it is necessary and appropriate to serve persons with hearing disabilities through closed captioning and other technologies. Moreover, in particular, the FAB recognizes the critical need of serving those with hearing disabilities during times of emergency.

Each year, Florida is impacted by many devastating emergency and disaster events requiring the immediate alerting of citizens and visitors to provide them with an opportunity to protect themselves and time permitting, their property. The FAB has been a leader in working with federal, state and local officials to design and implement a national state-of-the-art Emergency Alert System (EAS) to allow for emergency officials to use to announce or transmit an emergency alert to potentially impacted individuals within the State of Florida. In particular, C. Patrick Roberts, the

President of the FAB serves as the Broadcast Chair of the State Emergency Communications Committee. In this capacity, the FAB worked with the State Emergency Communications Committee, in conjunction with the Florida Division of Emergency Management, along with state and county emergency management officials, and the National Weather Service to establish the Florida Emergency Alert System Operational Plan. This Plan is reviewed at least annually with the last revision being authored on June 1, 2005.

While the State of Florida has had many different types of emergency and disaster events, the most frequent are hurricanes hitting Florida during the hurricane season of June 1 through November 30 of each year. The FAB, in conjunction with the Florida Division of Emergency Management, coordinates the dissemination of critical information throughout the state and in particular to radio and television stations in the affected areas.

Experience has shown that hurricanes are unique in many ways with respect to dissemination of emergency information. First and foremost, unlike many disaster or emergencies, thanks to the National Weather Service, residents are usually provided days, if not one or two weeks, of advanced notice of an impending storm. During this time, residents are urged to take on necessary precautions if they are in the potential hurricane cone. As the storm approaches, the pace and nature of the information dramatically changes to direct the local population to potential evacuation routes, area shelters and other critical information. During the storm, the information concentrates on the immediate impact areas and how individuals need to take action to protect themselves, their families and their property. After the storm, the type of information again dramatically changes and focuses, at least initially, on search and rescue efforts, as well as damage assessment, and then quickly shifts into providing critical information regarding recovery and relief efforts. Thus, the broadcasting of

emergency information tends to go on for long periods, many days with twenty-four hour coverage.

While the above general description is valid, we have also learned the hard way that each storm represents unique and individual challenges that must be met in an ever-changing dynamic environment. For instance, unlike Hurricane Andrew which hit Florida on August 24, 1992, and made landfall in South Miami-Dade County and affected a relatively small area, the recent Hurricane Wilma marched across the state entering in the Naples area and departing in the Palm Beach area and left a path of destruction that included more than twenty-one (21) counties in total with substantial damage and power outages throughout Miami-Dade, Broward, and Palm Beach counties. Hurricanes Charley and Katrina have taught us that hurricanes do not always follow predicted paths and can make dramatic and unexpected turns which will significantly vary the potential area being impacted by the hurricane winds, rain and associated flooding with little advance notice.

Florida broadcasters, both radio and television, take these annual events very seriously. Stations spend substantial resources, time and effort each year preparing for hurricane season. Stations start covering potential hurricanes in their regularly scheduled news and weather forecasts days and perhaps weeks in advance. As the storm approaches, many stations go to full-time broadcasting without commercial interruption. During the storms, most stations have continuous twenty-four hour, seven days a week (24/7) coverage. When inevitably the power goes out, television stations tend to adopt a “radio format” where while they maintain the television visual signal for the relatively small audience that has portable battery-operated television sets, and they simulcast over local radio stations to bring a continuous 24/7 audio feed of emergency information to the local residents. The continuous broadcasting goes on for days and sometimes weeks after the hurricane has left the impacted area. Thus, unlike most other emergencies, hurricanes present a unique

challenge to broadcasters in that it stretches, and at times overwhelms, plans and resources of any of the stations and its employees despite the best planning. During the times of this intense coverage, the stations collect information on a moment-to-moment basis from numerous government and state, federal and local agencies, as well as non-profit relief entities, in addition to their own live reports. At times, the stations are simply overwhelmed by the avalanche of information coming in that needs to be evaluated, filtered, edited and then presented on air.

It is this process of presenting timely and accurate emergency information that causes concerns with the FCC's consideration of providing emergency services to the hearing impaired, and in particular, providing closed captioning programming of this information.

Accordingly, the FAB calls upon the FCC in its evaluation of the captioning rules to recognize the unique and unpredictable circumstances during which the stations are providing news, weather and emergency information during these hurricane events. Specifically, the FAB urges the FCC to avoid unrealistic Monday morning enforcement standards that would impair the ability of journalists and licensees to make the needed good faith judgment calls required during chaotic and dynamic conditions.

The FCC seeks guidance as to whether it should establish standards for non-technical quality of closed captioning and further states ask the question "are there non-technical quality issues other than those generally considered (accuracy of transcription, spelling, grammar, punctuation, placement, identification of non-verbal sounds, pop-on or roll-up style, verbatim or edited for reading speed and type font) that the FCC should consider?" The FAB calls upon the FCC to recognize that even under the best of circumstances, errors are made. During times of broadcasting emergency information, the speed and amount of information that is being broadcast is prone to

problems and mistakes. Employees are physically and emotionally exhausted and nevertheless called upon to work extended hours to provide 24/7 news coverage.

According to the National Captioning Institute (NCI), the cause of most mistakes are human errors. Real time captioning poses unique challenges. Because the captions are displayed instantaneously, there is no time to proof read them or correct them. Mistakes can be caused by such errors such as hitting the wrong key or the computer incorrectly translating the phonetic code. In addition, soft spoken words that are muffled or hard to understand can lead to captioning errors. Further, captions may fall behind even as they're created since there is a limit on how fast the television technology can show them. Finally, although the NCI standard of accuracy for live captioning is a minimum of ninety-eight percent (98%), it recognizes that "not many people can simultaneously listen and reproduce what they have just heard at a rate of speed for more than an hour or more." Finally, NCI recognizes that additional problems and errors occur as a result of transmission and reception interference issues and other technical problems.

Accordingly, The FAB strongly urges the FCC not to adopt non-technical quality issues for closed captioning.<sup>1 2</sup>

#### The FCC Further Seeks Guidance on its Complaint Procedures and Response Times

In the early 1990's, the FAB initiated a unique program with the FCC with respect to technical compliance of FCC rule and station inspections. Specifically, under an agreement with the FCC, the FAB contracted with an independent inspector who provides a complete FCC inspection

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<sup>1</sup> See [www.ncicap.org/faq1.asp](http://www.ncicap.org/faq1.asp)

<sup>2</sup> It is important to recognize that even in a hearing proceeding, witnesses and parties are given the opportunity to correct realtime transcripts under the FCC's rules. See Section 1.318(e) of the FCC's rules.

of Florida broadcast stations who voluntarily submit to the program. If no problems are found, the FAB reports compliance to the FCC and issues a Certificate of Compliance. If problems exist, the contract inspector provides a confidential report outlining potential problems or FCC violations. The station is given a specified time to correct the problems and submit to reinspection and provide an alternative proof of compliance. Then with a clean bill of health, the FAB notifies the FCC of the station's compliance and issues a Certificate of Compliance. If a station participates in this voluntary program, the FCC agrees not to perform a random inspection on the individual stations for a period of three (3) years. In addition, in the event that there is a interference complaint filed with the FCC, it is referred to the FAB for initial resolution. In those cases where the stations eliminate any problems or FCC violations, the FCC waives any enforcement issues or penalties.

Accordingly, the FAB recommends to the FCC a similar enforcement program where complaints of closed captioning will be referred to the State Broadcast Association for purposes of dispute resolution and remedying of any technical problems or potential FCC violations of its closed captioning rules. In particular, the FAB would contact the individual station, as well as, if appropriate, the complainant, and work through the potential complaint. Given the history of the FAB's alternative inspection program, the FAB believes that in most instances, captioning complaints will be able to be mutually resolved. In the unlikely event that the complaint cannot be resolved in a timely manner, the FAB would refer the unresolved dispute to the FCC for ultimate resolution. The FAB recommends that in the event that it is able to resolve with the broadcaster the initial complaint in a timely manner that no fine or penalties be imposed by the FCC.

The FCC also seeks guidance on fines and penalties for failure to close caption programming in compliance with the FCC's rules. As noted above, the FAB firmly believes that if the FCC adopts

a State Broadcast Association Compliance Program, then in the event that any complaints or failures to comply with the FCC's rules are resolved at the state broadcaster level, no fines and penalties should be assessed against the broadcaster. In the alternative, the FAB strongly urges the FCC to adopt a standard of good faith effort in its evaluation of potential violations of closed captioning rules. The FAB strongly believes that the application of strict compliance that the FCC has taken in recent cases is inappropriate.

In particular, good faith should be evaluated taking into consideration a station's preparations for closed captioning, acquisition of equipment and maintenance thereof, training of its staff, and evaluation of the circumstances under which any failures occurred, and what remedial steps the stations voluntarily took to address the problems. Moreover, with respect to emergency information in closed captioning, we urge the FCC to again look to the State Broadcast Associations as a partner. Specifically, the FAB would propose chairing an annual emergency information seminar for radio and television stations in the State of Florida to evaluate how emergency information was disseminated throughout the state during the prior year. Stations would be encouraged along with the State Emergency Management to analyze what has worked and what has not, and to look at adopting new and better procedures and resources for the following year. As part of the seminar, the State Broadcast Association would be required to hold sessions with representatives of the local closed captioning communities, as well as broadcasters and emergency management to evaluate, with particularity, the provision of emergency information to the hearing impaired in the state of Florida. The FAB would issue a Certificate of Compliance for all stations voluntarily participating in this program. The FAB would urge the FCC to recognize this participation as further evidence of a stations good faith commitment of the broadcasting of closed captioning emergency information

to the hearing impaired.

Respectfully submitted,

/s/

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